

**“We humbly beg pardon...”**

## **The use of restorative justice in fraud offences, 1718-2018**

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### **Introduction**

Restorative justice is an increasingly popular process in England and Wales, and indeed, ‘is now on the criminal justice agenda worldwide’ (Gavrielides 2007: 265). Research widely suggests that the positives of using restorative justice are far-reaching, from high-victim satisfaction to lower recidivism rates (Zehr, 2005; Wilcox and Hoyle, 2007; Latimer *et al*, 2005). There is also a recognition that offenders often appreciate having the opportunity to apologize for the harm they have caused (Shapland *et al*, 2006). Restorative justice processes are currently mostly utilized within a youth justice capacity, including within both English and Welsh education systems (Devi-McGleish, 2017), however such processes are being increasingly implemented in adult justice, policing and prison settings (CJJI, 2012; Kokotsaki, 2013; Shapland *et al*, 2008). This article focuses on a particular aspect of restorative justice; the use of public apologies for offences of fraud by looking at historical examples from digitised newspaper sources (British Library Newspaper Archive, 2018) through a ‘restorative lens’ (Zehr, 2005: 177-214) and relating such examples to current restorative justice theories.. It argues that the suitability of a public, printed apology in such cases came both from the wide-scale acknowledgment of harm that had been perpetrated on victim(s) and as a mechanism of shaming the offender.

### **Defining restorative justice**

It is accepted throughout the relevant literature that many current Western restorative justice practices have been inspired by the approaches of various indigenous groups, for example, in Australia and New Zealand. In such societies, justice is often closely linked with spirituality and an emphasis on the restoration of harmony and balance in

the group (Mirsky, 2004; Wachtel, 2013). When harm has been caused it is important for the wrong-doer to take responsibility for their actions and try and make them right, but also for the community to remain cohesive. Issues are dealt with within the community in order to ensure the wrong-doer remains integrated within and connected to the community.

With regard to modern-day Western restorative justice, Daly & Immarigeon (1998) and Gavrielides (2007) argue that contemporary restorative justice theories arise from a social movement in the 1970s and are grounded in writing by scholars from feminist theories of justice, psychological theories, peace-making criminology, and religious and spiritual theories. Zehr (2002) opines that this move in the literature came from a deep dissatisfaction with the criminal justice system and a feeling that it contributed to, rather than healed, social conflict. Christie (1977) added to this movement, claiming that conflicts are important parts of society and arguing that the state had 'stolen' conflict from victims, and therefore also stolen their chance to recover from the crime. Christie (1977) believed victims of crime, in particular, had lost their rights to participate in dealing with this conflict as the field was monopolized by the State. However, the restorative justice literature provides a wide-ranging set of practice and theory, and the definition of restorative justice remains somewhat contested.

Sharpe (1998) argues that whilst definitions vary, at the heart of any restorative justice program the aims are: to place decisions in the hands of those who are affected by a crime, make justice more healing and transformative, and reduce the likelihood of future offending. Whilst the definition of restorative justice remains contested, there is a universal dedication shown amongst practitioners to an alternative view of justice that focuses on people, and rather than viewing offences as a crime against the State, viewing them as offences against people and the reparation of the harm caused.

Zehr and Mika (1998) state that the fundamental underlying principles of restorative justice are that crime is a violation of people and relationships, that these violations

cause obligations and liabilities for a number of people, and that restorative justice aims to heal and put right these wrongs. The priority in any restorative justice process should be to meet the needs of the victim and to ensure that the offender is aware of the damage they have caused to people and relationships, and their liability to heal that damage (Johnstone, 2011).

Braithwaite (2006) in particular provides an overarching definition that the authors of this article believe cover the central tenets necessary for a restorative approach:

*“Restorative justice is a process where all the stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. With crime, restorative justice is about the idea that because crime hurts, justice should heal. It follows that conversations with those who have been hurt and with those who have afflicted the harm must be central to the process”* (Braithwaite, 2006, p.29).

## **Financial fraud**

As Croall (2017) suggests, initially it may seem that restorative justice has little relevance to ‘white-collar’ crime, however with closer investigation and a look to historical examples this article looks at how restorative justice can and has been used to benefit both victims and offenders of financial fraud - see CIPFA (2012) for a current definition and examples of financial fraud. The authors argue that historic public printed apologies (which date back to the early eighteenth century) constitute a form of restorative justice as they aim to provide reparation for victim(s) and reintegrate the offender within wider society whilst appropriately shaming them.

The unique nature of corporate and large-scale financial crime and the breadth of the issue makes it an interesting topic in and of itself. Regarding the term ‘corporate crime’, the authors favour Simpson *et al*’s definition of corporate crime as encom-

passing ‘a wide array of illegal activities that are criminally, civilly, and administratively proscribed and which may be undertaken by individual managers/employees as well as by the firm (as an organizational actor) (Simpson et al, 2012: 2). As the creator of the term ‘white-collar’ crime, Edwin Sutherland argued, official crime statistics were of little use when investigating such crime; defined by him as "a crime committed by a person of respectability and high social status in the course of his occupation" (Sutherland, 1940). There remains the recognition that crime statistics do not adequately record cases of financial fraud. Whilst this article does not aim to expatiate discussions of the breadth and depth of both recorded and unrecorded fraud in England and Wales and indeed the definition of fraud, it will review the potential for the use of restorative justice in these types of cases. The Fraud Advisory Panel (2011) in England and Wales suggested that there needs to be increased discussion surrounding the use and effectiveness of non-criminal routes in achieving justice for victims in these cases. In order to do this effectively, it is necessary to consider what justice could look like in these cases.

Crimes of this nature are often seen as particularly abhorrent by the public, especially when those who are seen as vulnerable are disadvantaged (Victim Support, 2017). Whilst there is no evidence that corporate crime directly affects a particular group of people disproportionately, wider social divisions are thought to be reflected in victimisation (Levi, 1995). The public and academics (Croall, 2017) alike call for harsher punishments for those involved, and there was considerable discussion concerning the leniency or otherwise of the seven-year sentence handed down to Kweku Adoboli, a former UBS trader who lost over \$2.3 billion in so-called ‘rogue trading’ (Hornuf & Haas, 2014); had he have stolen such a large amount during a bank robbery he would probably have received a much stiffer sentence. However, the positives of using restorative justice either alone or alongside a custodial sentence should also be considered, particularly the long-term impact of such practices. Using restorative justice could potentially provide: better outcomes for victims; lower the chance of recidivism for offenders; and, create more ethical business cultures (CJJI, 2012;

Sussex PCC, 2017). It is important to note here that restorative justice is not a ‘soft’ option, and could potentially have far-reaching consequences for offenders (particularly those who run or are affiliated with a business).

Button *et al* (2016) discuss that victims often prefer to turn to private prosecutions due to frustrations with the State-sanctioned Crown Prosecution Service route. That traditional retributive routes in dealing with crime are providing a limited level of victim satisfaction, provides an argument for the use of restorative justice processes as diversionary tactics. In crimes of this nature the responsiveness and flexibility of restorative justice in comparison to more traditional routes can be seen as a real positive for victims of financial fraud. Different victims will have different needs and using restorative justice could work towards addressing those needs. Restorative justice also has the potential to encompass a broad range of needs that extend beyond the immediate victims to more widely look at how financial fraud impacts society and how to begin to implement behavioural changes in businesses and promote more ethical practices.

### **How can restorative justice address large-scale financial fraud?**

In England and Wales there is limited discussion of the use of restorative justice with financial fraud cases. Gill and Howell (2017) carried out a police-led restorative intervention with numerous victims of insurance fraudsters. They expressed support from the National Police Chiefs’ Council who recognized the numerous positives that victims of fraud could gain from restorative processes. These include the empowerment and reparation of victims, cost efficiency and the offender(s) taking responsibility for their actions (Gill and Howell, 2017). This would suggest that there are some recognized incentives to using restorative justice in such cases, and that the lack of usage is down to other factors.

In investigating the use of restorative justice for environmental crimes in New Zealand, Verry *et al* (2005) make some interesting suggestions. Whilst restorative justice

can be used alongside the more traditional criminal justice measures, they argue that if the severity of the crime is below a certain threshold then restorative justice could be used as diversionary practices away from the criminal justice system. These factors investigate the severity of the crime, an inadvertent breach of the law, regretful attitudes towards the offence, a substantial offer of restitution, the lack of commercial benefit, and a previous clean record (Verry *et al*, 2005). Some of these would not be suitable for use with financial fraud, as in England and Wales under the 2006 Fraud Act the notion of dishonesty is central to fraudulent behaviour, thereby distinguishing it from a mistake or negligence (Button *et al*, 2016). Nevertheless, these principles may prove useful in deciding when to divert the crime away from the criminal justice system, or to use restorative justice alongside more traditional retributive justice.

Arguably, the use of restorative justice should go beyond notions of fairness or severity of punishment. Restorative justice offers far more to cases of financial fraud than a more traditional criminal justice setting. If utilized efficiently it could provide improved outcomes for victims, behavioural change for corporate and business cultures, and empowerment for those involved in the process. A restorative justice approach to crimes of this nature would provide more of a chance for victims to receive apology, restitution, empowerment and perhaps achieve a more satisfying outcome. In addition to this, encouraging corporations and businesses to consider their offending behaviour and the harm it has caused may inspire some behavioural change and provide more responsible and ethical work place practices and behaviour resulting in community-wide benefits.

### **Public apology and reintegrative shaming**

Barnard (1999: 961-72) posits that the prospect of the shame brought on by being exposed whilst carrying out a corporate crime acts as a deterrent, as these types of offences are often very community-based. Coupling this shame with the prospect of ‘making things right’ through a restorative justice process opens the door for genuine apology, remorse, restitution and potential behavioural change on the part of the of-

fender. Exposure of these crimes also provides deterrence to other potential offenders (Barnard, 1999: 967). In England and Wales when regulatory bodies rather than the criminal justice system deal with fraud, both private and public shaming are used as part of the sanctions against the accused (Button *et al*, 2016). As they argue however, using regulatory bodies rather than going through the criminal justice system effectively contributes to decriminalizing certain types of behaviour. Shaming in itself is seen as worthy of sanctioning offenders with, so why not utilize it in a way that can support and benefit victims, and also promote change within the individual/business that committed fraud? If offender(s) are left with feelings of remorse, guilt and shame these need to be carefully managed and hopefully channelled into future positive practice (Luedthe, 2014; Zehr, 2005).

As Luedthe (2014) discusses, the symbolic reparation to victims may be as important as the financial restitution. By using restorative justice processes as part or all of a sentencing plan, businesses and corporations can seek to heal the deeper wounds inflicted up on the victims. This also addresses the wider societal harms caused by these types of crime. Crimes such as wide-scale financial fraud weaken societal bonds by damaging trust in those who are more powerful. By empowering victims (a central facet of restorative justice) this goes some way to healing these deeper individual and societal wounds. As part of this reparation of harm, it is possible that public apology could form a meaningful part of restorative justice.

One of the central facets of restorative justice is repairing harm or ‘making amends’. This would typically come in the form of restitution, and potentially, apology or changed behaviour. Whilst there is no necessity for apology or forgiveness in a restorative justice process, with some academics arguing that it is merely a form of ‘symbolic reparation’ (Bennet, 2006: 128), the communicative, interactive and relational aspect of restorative justice link it closely to apology and perhaps forgiveness (Shapland, 2016). It can reasonably be assumed that if an offender has sufficiently shown the remorse necessary in order to consensually take part in a restorative con-

ference, then an apology will follow. Even without a restorative justice process, apology is recognized as an important facet in helping empower victims and potentially lowering recidivism (Petrucchi, 2002). If an apology could be given within the structure of a restorative process it may result in higher victim satisfaction and behaviour change on the part of the offender(s); in their study of the effectiveness of a five-day intensive restorative justice programme entitled Supporting Offenders through Restoration Inside (S.O.R.I.) offered to offenders in several English prisons, in which participants had to make a 10-minute speech apologizing for their offence(s) to members of the public, (Beech and Chauhan, 2013) found that “participants had an enhanced victim concern for all types of victims, were more motivated to change their offending behaviours, and were more willing to take responsibility for their actions, after completion of the course.”.

The rise of social media means that public apology is becoming increasingly commonplace. There is relatively extensive literature (McNamara and Dhami, 2003; Regehr and Gutheil, 2002; Stubbs, 2007; Petrucci, 2002) on the use of apology within a restorative justice process, and the essential (or non-essential) nature of apology as part of a successful restorative intervention. Strang (2002) found that victims tend to be more concerned about emotional rather than monetary reparation. Apology can be helpful in gaining this reparation for victims. There is a substantial symbolic meaning of apologies for victims, and it is proposed that this may be particularly helpful for healing (Bolivar *et al*, 2013). The complexity of apology has also been explored, with Daly (2003) questioning what it means to give and receive a meaningful, sincere apology. There is the potential that a printed apology, due to the open nature of the act, would seem more sincere. Tauchvis (1991) argued that a sincere apology consists of three separate dimensions, it provides: a full acknowledgement of the harm caused; full acceptance of responsibility; and exhibits feelings of remorse and shame. Tauchvis’ work on sincere apologies provides a useful guide when looking at apologies, particularly the historical printed newspaper apologies later in this article.



In fact, utilizing public apology in restorative justice as either a diversionary practice or alongside the criminal justice system may lessen thoughts of restorative justice being a ‘soft’ option. Marshall (1999) states that restorative justice principles enables crimes to be considered within the social context they are committed. This seems rather essential in crimes such as financial fraud where crimes of deception are committed out of, one can assume, greed. Another guiding restorative principle is flexibility and creativity in achieving outcomes that satisfy all stakeholders (Marshall, 1999). O’Mahony and Doake (2017) suggest that one of the distinct positives of using restorative justice for any type of crime is the flexibility it allows in addressing individual needs; flexibility that a more traditional criminal justice route simply does not allow. The nature and form of ‘restoration’ can be tailored to each individual, according to severity and need.

The public recognition of harm caused to victims may help in healing the harm the offender caused and ‘restoring’ the victim, as it may do within the realm of private apologies in restorative justice conferences (Bolivar *et al*, 2013). In fact, there is the potential that this public route to apology and acknowledgement of harm will not only support the victim’s healing, but initiate behavioural change in the offender(s) through reintegrative shaming. Reintegrative shaming, a term coined by Braithwaite (1989) suggests that an individual’s pro-social behaviour originates from the desire to belong to a group and avoid discontent of those within the group. Reintegrative shaming theory makes the case for community involvement and disapproval when an individual has caused harm; however the individual should be treated with respect and reintegrated back into the community. The community should reinforce to the wrong-doer that the organization does not condone and accept their behaviour, however it should also offer support for them and ensure that they are integrated back into the community. This is in direct contrast to ‘stigmatizing’ or ‘disintegrative’ shaming that forces individuals who have caused harm to become further disconnected from the community and support that they require to re-enter society (Braithwaite, 1989).

The recognition of harm by the offender and apology to the victims is seen to work in two major ways: the confirmation of the victim's status as a victim, and the offender's willingness to be remorseful about the victimization as confirmation that the offender is not intrinsically bad (Bolivar *et al*, 2013). Therefore once they have been appropriately shamed (in this case by public apology) they can be reintegrated back into society and hopefully exhibit some behavioural change. Arguably for offences such as financial fraud, where there may be a wide range of victims, public apologies may then be a useful way in which offenders can acknowledge the harm to victims and the wider harm to society caused by their behaviour. There is currently little research on the use of public apology as a restorative justice mechanism. Fuchs-Burnetta (2002) argues that public apology by large corporations are generally a positive tool used to help repair damage done to relationships. Reparation of harm is a central tenet of restorative justice, so public apology may be a useful process through which to heal relationships and re-embed trust within both the victim and society. Blatz *et al* (2014) found that victims viewed the perpetrator group in a more favourable light after a public apology; a concept that would be attractive to the perpetrator and would also come within the remit of a restorative process.

There are many potential ways to facilitate restorative processes in cases of financial fraud. Gabbay (2005) proposes that using an innovative system similar to the Truth and Reconciliation Commission in South Africa could potentially be suitable when looking at a case with multiple and widespread offenders and victims (Truth and Reconciliation Commission Reports, 1998-2002). In all likelihood it may be difficult to carry out more traditional mechanisms of restorative justice such as group conferencing or victim-offender mediation, particularly if there are numerous victims or offenders. The logistics of arranging such a process and ensuring all stakeholders were sufficiently prepared may not be possible. Also, the wider harm that fraud and corporate crimes cause lend themselves to a more public process that will strengthen and repair societal bonds and harm. In cases where there are clear offenders and victims a

public apology in printed form may be suitable in acknowledging the harm caused and meeting the victim'(s') needs for reparation.

### **Historic printed public apologies**

In order to supply exemplars of how such public apologies could function as part of a restorative justice and reintegrative shaming approach to financial fraud, the historical use of printed public apologies will now be explored. Such printed apologies date to the earliest decades of the eighteenth century and therefore have almost as long a history as the newspapers in which they appear (Black, 2001).

Such forms of restorative justice can be seen as challenging to modern Western sensibilities; the traditional criminal justice system of judge or magistrate, jury, trial and sentence appears to be so ingrained within our collective thought that other ways of looking at offending and justice are often viewed with suspicion and mistrust. From an historical point of view however, this is an untenable and anachronistic approach; our 'traditional' criminal justice system is in fact largely a modern construct. For example, the presumption of innocence until found guilty by one's peers arguably did not gain popular credence until the latter half of the nineteenth century with the creation of a Director of Public Prosecutions in 1880 and the increasing role of police prosecutions. It was not until the second half of the nineteenth century until police forces (county and borough) began to take on the role of prosecutor (a role which they held onto for over a century). Before then if one appeared in court, the general consensus was that one was there for a good reason, as trials could cost private prosecutors a lot of money and were therefore not entered into lightly. Before the Prisoners' Counsel Act 1836, defendants had no formal right to defence counsel, and trial by jury was of course limited to trial by an all-male jury until after the First World War, with magistrates' benches being similarly exclusively male until 1919. Furthermore it was not until 1933 that the Grand Jury (a committee of the 'great and the good' who decided whether a trial at either Quarter Sessions or the Assizes should

proceed or there was No True Bill to be heard) was abolished, thereby heralding the end of a remnant of what could be considered a largely feudal system.

One of the earliest examples of a printed public apology can be found in the *Leeds Intelligencer*, 3 July 1759, which carried an article reproduced from an earlier edition of the *Cambridge Journal*. The article begins with the following sentence:

*Whereas I, William Margetts the younger, was at the last assizes for the county of Cambridge, convicted upon an indictment for an attempt to rise [sic] the price of corn in Ely market upon the 14<sup>th</sup> day of September 1757, by offering a sum of six shillings a bushel for wheat, for which no more than five shillings and ninepence was demanded...*

A bushel was an ancient measurement of weight, equivalent to c.60lbs (c.27.2 kilograms). This was a serious offence, as the size of bread loaves were governed by the price of wheat, its major ingredient, by the Assize of Bread and Ale. This was a mediaeval law dating back to AD1266 that graduated the weight of a loaf according to prevailing wheat prices; basically, the more wheat cost, the smaller the loaf. This could obviously have considerable implications as bread was a part of the staple diet of the labouring poor. Any artificial inflation in the price of wheat could have major consequences for those on a subsistence diet. An increase of 3d per bushel could reduce the size of a wheat loaf costing a penny from 10 ounces and 5 drams (1/16<sup>th</sup> of an ounce) to 9 ounces and 15 drams, thereby making the loaf 6/16<sup>th</sup> of an ounce (8.8 grams) lighter (*Gentleman's Magazine*, 1758, p. 324). This may not sound much, but such a shortfall could make a huge difference to the weekly calorific intake of an agricultural labourer and his family, who depended on loaves made of wheat for much of their sustenance (Collins, 1975: 99). Bakers were not above adulterating their loaves in order to bulk them out, and on 29 September 1758 an updated Assize of Bread was passed in an attempt to prevent such adulteration, which on occasions had apparently proved fatal to the consumer; if found guilty of such adulteration, a master

baker could be fined a minimum of £2 and a maximum of £10 (a considerable sum in the mid-eighteenth century) or imprisoned for one month (*Gentleman's Magazine*, 1758, p. 323). The Assize of Bread continued under various iterations until 2008.

In lieu of further prosecution for his offence, Margetts was permitted by the unnamed prosecutor (presumably either a fellow dealer or a magistrate) to instead pay £50 'to the poor inhabitants of the town of Ely', together with a further £50 to the poor inhabitants of Cambridge, and all the concomitant costs incurred by the prosecutor. Furthermore, he agreed to the

*reading of this acknowledgement of my offence publickly [sic], and with a loud voice in the presence of a magistrate, constable or any other peace officer in the said town of Ely at the market place there, between the hours of twelve and one o'clock on a publick [sic] market day...*

It is recorded that Margetts read his public apology at Ely Market on 2 June 1759 in the presence of the Chief Constable of Ely, and he also paid for the printing of a large public apology to be inserted in the advertising columns of three local and regional newspapers (including the evening London papers) over a period of four days. The total cost of these measures was considerable, and perhaps reflect the fact that Margetts came from a wealthy and well-connected family and that he was a successful businessman, and his son became a solicitor and later Mayor of Huntingdon (Asquith, 1975).

This is one of the earliest examples of restorative justice that the authors have found as part of their ongoing research into the use of printed public apologies as a type of re-integrative restorative justice. During the course of their preliminary research, almost 3,000 examples of private printed public apologies detailing offences ranging from theft to violent assault have been discovered in digitized historical British newspapers dating from the early eighteenth century through to the early twentieth

century, and it is likely that the final number of these apologies will rise considerably as a result of their ongoing research.

Apologies from individuals or groups of individuals first began appearing in British newspapers in the first quarter of the eighteenth century and continued through to the early twentieth century before largely disappearing. They rapidly assumed a largely standardized format; beginning with one of three stock phrases: ‘Pardon Asked’, ‘Beg Pardon’, or ‘Public Apology’, and then continuing with the name and profession of the apologist, followed by the date and time of the offence, a brief summary of the offence with the name and address of the victim and an explanation that by granting the offender the chance to make such a public apology the victim has spared the offender an appearance in court. A typical example of such apologies can be found in the *Derby Mercury*, 5 November 1801, which carried the following statement:

*Pardon asked; and a caution to Boatmen.*

*WHEREAS I JOHN CUFLIN, Boat-master of Leicester, did in the night of the 21<sup>st</sup> of October instant, cut, take, and carry away from a Boat at Shipley Wharf, a Rope belonging to Mr. Robert Shaw, of Shawley, in the county of Derby, and by my asking his pardon in this public manner, has kindly stopped all prosecution against me.*

*his*

*JOHN X CUFLIN*

*mark*

*Witness,*

*Paul Brentnall*

*Joseph Boam*

*Shipley Wharf, October 22<sup>nd</sup> 1801*

We see that the apology contains the name, occupation and address of the offender, together with a brief account of the offence (including date and time), and also pro-

vides the reader with the name and address of the injured party. The document is pseudo-legal in appearance, having being signed (albeit by an X in this instance as Mr Cuflin appears to have been illiterate) in the presence of witnesses. Who created the wording of the advertisement remains a mystery, though due to Mr Cuflin's illiteracy, it may not have been the offender, but rather a sub-editor, or even perhaps the victim, Mr Shaw.

Such apologies continued to feature prominently throughout the majority of the eighteenth and nineteenth centuries before largely disappearing in the early twentieth century. Such apologies were designed to avoid the more traditional criminal justice route of trial before either magistrates or judges in official courts of law. By agreeing to have a carefully drafted public apology printed and published at their expense (and also often reimbursing either the victim or wider society in the form of a charitable donation, such as those made by Margetts), offenders could avoid an often traumatic and damaging appearance in the adversarial and expensive English criminal justice system. If found guilty (even for a fairly trivial offence such as that depicted above) offenders could be imprisoned or (until the mid-nineteenth century) even transported to America (until 1775) or latterly Australia (until 1868), resulting in family penury and separation, with concomitant costs to society, as any dependants would be forced to rely on parish or poor relief (Cox, 2014; Johnston, 2015). The alternative offered an opportunity by which their guilt was publicly acknowledged and their misdeeds atoned for. The victims of crime also benefited with regard to the fact that court prosecutions could often involve a considerable amount of inconvenience and expense. Another factor in their favour is that such printed apologies could ensure that the matter was expedited within a matter of days rather than the weeks or even months it could take for a case to be heard by magistrates at Quarter Sessions (held, as the name suggests, in the county town every three months) or by a judge at the normally twice-yearly Assizes.

Such public apologies were nearly always printed on the cover page of the newspaper; an obvious attempt to ensure their notice by a wide audience. The fact that until the latter half of the nineteenth century newspapers were out of the financial reach of the majority of the working population due to a combination of high Stamp Duty being imposed upon them (until 1855) and low levels of adult literacy suggests that such apologies were not mainly designed to publicly shame the offender within his or her own social class, but rather to express to the victim's peers his or her magnanimity and generosity of spirit, and also to reaffirm that they were the blameless and innocent party in the matter in question (Cox, 2012, pp. 7-8). This aspect is particularly visible in the following example taken from the *Birmingham Daily Post*, 26 October 1866:

*PARDON ASKED*

*I, SARAH CLARKE, of Greet's Green, West Bromwich, wife of John Clarke, Puddler, do hereby EXPRESS my SORROW and regret at having committed a most violent and gross Assault upon Joseph Haden, one of the Officers of the Oldbury County Court, and do gratefully acknowledge the kindness of the High Bailiff in refraining from prosecuting me for the same – Dated 23<sup>rd</sup> October, 1866. SARAH CLARKE*

*Witness – J. DALBY*

The above example is interesting in that not only does it publicly shame the female transgressor, but it also names her husband and details his profession, thereby ensuring Sarah's total humiliation before her innocent husband. The fact that the victim was an officer of the County Court, and therefore a member of the traditional criminal justice system shows the extent to which printed public apologies were accepted as an alternative to more formal routes of justice.

## **Conclusion**



William Margetts' example is somewhat unusual in that it resulted from an attempted financial fraud i.e. the artificial raising of the price of wheat, rather than the more usual larceny or interpersonal violence represented in the majority of other printed public apologies, but it serves a purpose in reminding us of two issues: first that fraud is not a uniquely modern phenomenon, and second that restorative justice is similarly not a new concept.

In this article the authors (respectively a criminologist and a criminal justice historian) have sought to show that interdisciplinary research into restorative justice can yield new viewpoints and suggestions both as to how it has been practiced in the past and how it could be applied in the future to a variety of offences including financial fraud. Restorative justice practices were not unknown to our early-modern forbears (although they would not have recognized the term) and such practices were used frequently in order either to circumvent or act as an adjunct to the more 'traditional' English and Welsh criminal justice system (Devi-McGleish and Cox, 2018). Despite the fact that, as Johnstone has remarked, 'many proponents of restorative justice, I suggest, are inclined to present it as a new 'technique' for dealing with offenders...' (Johnstone, 2004) it is clear that in its various forms of nomenclature restorative justice is not a new phenomenon but rather a new typology for a range of non-custodial procedures practiced over at least the past three hundred years. This article challenges the prevalent view of restorative justice as a new 'technique' within the English criminal justice system and suggests that the use of restorative justice in the present day has a long tradition, albeit one that is largely overlooked by many modern criminologists. It does not presume to offer easy answers to the effectiveness or otherwise of restorative justice in its various forms, but rather aims to present the ideas and theories behind the concept in an historical context in such a way as to illuminate possible avenues forward in its modern application.

## References

- Asquith, I (1975) Advertising and the press in the late eighteenth and early nineteenth centuries: James Perry and the *Morning Chronicle* 1790-1821, *The Historical Journal* 18(4), 703-724
- Barnard, J W (1999) Reintegrative shaming in corporate sentencing, *Southern California Law Review*, 72, 959-1009
- Beech, A.R. & Chauhan, J. (2013) Evaluating the effectiveness of the Supporting Offenders through Restoration Inside (SORI) Programme delivered in seven prisons in England and Wales, *Legal and Criminological Psychology*, 18(2), 229-239
- Bennett, C (2006) Taking the Sincerity Out of Saying Sorry: Restorative Justice as Ritual, *Journal of Applied Philosophy* 23(2), 127-144
- Black, J (2001) *The English Press 1621-1861*, Stroud: Sutton
- Blatz, C W, Day, M V, & Schryer, E (2014). Official public apology effects on victim group members' evaluations of the perpetrator group, *Canadian Journal of Behavioural Science*, 46(3), 337-345
- Bolivar, D, Aertsen, I, and Vanfraecham, I (2013) The Ritual of Apology and Restorative Justice: Exploring the Victim's Perspective, In D Cuypers; D Janssen; J Haers, and B Segaert (Eds.). *Public apology between ritual and regret*. Amsterdam: Rodopi.
- Braithwaite, J (1989) *Crime, Shame and Reintegration*, Cambridge University Press: USA.
- Braithwaite, J. (2006) Doing Justice Intelligently in Civil Society, *Journal of Social Issues*, 62(2), 393-409
- British Library Newspaper Archive (2018) – available at <https://www.bl.uk/collection-guides/british-newspaper-archive>
- Button, M, Lewis, C and Tapley, J (2014) Not a victimless crime: The impact of fraud on individual victims and their families, *Security Journal*, 27(1), 36-54.
- Christie, N (1977) Conflicts as property, *The British Journal of Criminology*, 17(1), 1-15
- CIPFA (Chartered Institute of Public Finance and Accounting) (2012) *Fraud Definition and examples* London: CIPFA (available at <http://www.cipfa.org/html/elearning/nasbm/fraud%20awareness/resources/frauddefinitionandexamples.pdf>)
- CJJI (Criminal Justice Joint Inspection /Aro Lygiad Ar Y Cyd Cyfiawnder Troseddol) (2012) Facing Up To Offending: Use of Restorative Justice in the criminal justice system – a joint thematic inspection by HMIC, HMI Probation, HMI Prisons and the HMCPSI (available at <https://www.justiceinspectorates.gov.uk/hmicfrs/media/facing-up-to-offending-20120918.pdf>)
- Collins, E J T (1975) Dietary Change and Cereal Consumption in Britain in the Nineteenth Century, *Agricultural History Review*, 23(2), 97-115

- Cox, D J (2012) *A Certain Share of Low Cunning: A history of the Bow Street Runners, 1792-1839*, Routledge: Abingdon
- Cox, D J (2014) *Crime in England 1688-1815*, Routledge: Abingdon
- Croall, H (2017) The case for restorative justice and corporate crime, *Scottish Justice Matters*, 5(1), 6-7
- Daly, K (2003) Mind the Gap: Restorative Justice in Theory and Practice, *In Restorative and Criminal Justice: competing or reconcilable paradigms*, edited by A Von Hirsch, J V Roberts *et al*, 219-236, Oxford: Hart Publishing
- Daly, K and Immarigeon, R (1998) The past, present and future of restorative justice: some critical reflections, *The Contemporary Justice Review*, 1(1):21-45
- Devi-McGleish, Y (2017) *Implementing Restorative Approaches in Education: an exploration of two case-study sites*, unpublished PhD thesis, University of Aberystwyth (available at [https://pure.aber.ac.uk/portal/files/18782348/Devi\\_McGleish\\_Yasmin.pdf](https://pure.aber.ac.uk/portal/files/18782348/Devi_McGleish_Yasmin.pdf))
- Devi-McGleish, Y and Cox, D (2018) From Weregild to a way forward, *Wolverhampton Law Journal* 1(1)
- Fraud Advisory Panel (2012) *Obtaining redress and improving outcomes for the victims of fraud: An introduction to the civil justice initiative*, Fraud Advisory Panel
- Fuchs-Burnetta, T (2002) Mass public corporate apology, *Dispute Resolutions Journal*, 57(2), 26-32
- Gabbay, Z. D. (2005) Exploring the limits of the restorative justice paradigm: restorative justice and white-collar crime, *Cardozo Journal of Conflict Resolution*, 8, 421-485
- Gavrielides, T (2007) *Restorative Justice Theory and Practice: Addressing the Discrepancy*, European Institute for Crime Prevention and Control: Helsinki
- Gentleman's Magazine* (1758) 28
- Gill, M and Howell, C (2017) *An evaluation of a restorative justice trial: where the victims are businesses and the offenders are insurance fraudsters*, A Report for the City of London Police
- Hornuf, L and Haas, G (2014) Regulating fraud in financial markets: can behavioural designs prevent future criminal offences?, *Journal of Risk Management in Financial Institutions* 7(2), 192-201
- Kokotsaki, D (2013) *A review of the implementation of Restorative Approaches and its Outcomes within Durham Local Authority*. A report for Durham Local Authority
- Johnston, H (2015) *Crime in England 1815-1880 : experiencing the criminal justice system*
- Johnstone, G (2011) *Restorative Justice: Ideas, Values, Debates*, Routledge: Abingdon

Johnstone, G (2004) The Idea of Restorative Justice: Text of an Inaugural Lecture given at The Middleton Hall, University of Hull (available at [www.law.hull.ac.uk/downloads/inauguraljohnstone.doc](http://www.law.hull.ac.uk/downloads/inauguraljohnstone.doc))

Latimer, J, Dowden, C, & Muise, D (2005) The Effectiveness of Restorative Justice Practices: A Meta-Analysis. *The Prison Journal*, 85(2), 127-144

Levi, M (1995) The impact of fraud, *Criminal Justice Matters*, 36 (summer), 5-7

Luedthe, D (2014) Progression in the Age of Recession: Restorative Justice and White-Collar Crime in Post-Recession America, *Journal of Corporate, Financial and Commercial Law*, 9(1), 311-334

McNamara, M and Dhami, M (2003) The role of apology in restorative justice from victims' and offenders' perspectives, *Paper presented at the Sixth International Conference on Restorative Justice. Centre for Restorative Justice, 1-4 June, Vancouver, BC.*

Marshall, T (1999) *Restorative Justice: An Overview*, Home Office: London

Mirsky, L (2004). *Restorative justice practices of Native American, First Nation and other indigenous people of North America: Part one*. Retrieved from <http://www.iirp.edu/pdf/natjust1.pdf>

O'Mahony, D and Doak, J (2017) *Reimagining restorative justice: Agency and Accountability in the Criminal Process*, Hart Publishing: Oxford

Petrucci, C (2002) Apology in the criminal justice setting: evidence for including apology as an additional component in the legal system, *Behavioural Sciences and the law*, 20, 337-362

Regehr, C and Gutheil, T (2002) Apology, justice and trauma recovery, *Journal of American Academy of Psychiatry and the Law*, 30(3), 425-430

Shapland, J, Atkinson, A, Atkinson, H, Dignan, J, Edwards, L, Hibbert, J, Howes, M, Johnston, J, Robinson, and Sorsby, A (2008) *Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes*. Ministry of Justice Research Series.

Shapland, J, Atkinson, A, Atkinson, H, Champman, B, Colledge, E, Dignan, J, Edwards, Howes, M, Johnstone, J, Robinson, G. and Sorsby, A (2006) *Restorative justice in practice: findings from the second stage of the evaluation of three schemes*. Home Office Research Findings 274. London: Home Office.

Sharpe, S (1998) *Restorative Justice: A vision for healing and change*, Alberta: Mediation and Restorative Justice Centre.

Simpson, S, Laufer, W S, Craig Smith, N, Rorie, M, Schell-Busey, N (2012), *Corporate Crime Deterrence Protocol*, Oslo: The Campbell Collaboration

Strang, H (2002) *"Repair or Revenge". Victims and Restorative Justice*. Oxford: Oxford University Press.

Stubbs, J (2007) Beyond apology? Domestic violence and critical questions for restorative justice, *Criminology and Criminal Justice*, 7(2), 169-187

Sussex PCC (Police & Crime Commissioner) (2017) *Fraud victim praises restorative justice during International Restorative Justice Week* (available at <https://www.sussex-pcc.gov.uk/about/news/fraud-victim-praises-restorative-justice-during-international-restorative-justice-week/>)

Sutherland, Edwin H. (1940) The White-collar criminal. *American Sociological Review* 5, 1–12.

Tauchvis, N (1991) *Mea Culpa: A Sociology of Apology and Reconciliation*. Stanford, CA: Stanford University Press

*Truth and Reconciliation Commission of South Africa Report* (5 vols) (2011), Palgrave Macmillan, London

Verry, J, Heffernan, F, and Fisher, R (2005) *Restorative Justice approaches in the context of environmental prosecution. Conference paper presented at Safety Crime and Justice: from data to policy*. Australian Institute of Criminology Conference.

Victim Support (2017) *Policy Statement: Fraud* (available at [https://www.victimsupport.org.uk/sites/default/files/u3709/Victim%20Support%20Policy%20State-ment%20-%20Fraud.pdf](https://www.victimsupport.org.uk/sites/default/files/u3709/Victim%20Support%20Policy%20Statement%20-%20Fraud.pdf))

Wachtel, T (2013). *Dreaming of a new reality: How restorative practices reduce crime and violence, improve relationships and strengthen civil society*. Bethlehem, PA: The Piper's Press.

Wilcox, A and Hoyle, C. (2004) *The National Evaluation of the Youth Justice Boards Restorative Justice Projects*, Youth Justice Board.

Zehr, H (2005) *Changing Lenses: A New Focus for Crime and Justice* (3rd edition). Scottsdale: Herald Press

Zehr, H (2002) *The little book of restorative justice*. Good books: Intercourse, PA.

Zehr, H and Mika, H (1998) 'Fundamental Concepts of Restorative Justice', *Contemporary Justice Review*, 1(1), 47-55.